Best Practice ESEF – Germany

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Agenda

1. Facts and specialities in German Law
2. Best practice – first year of submission
3. Improvements and changes – second year of submission

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The ESEF Implementation Act based on the Transparency Directive 2013/50/EU has been in force nationally since 08/2020 and entails various adjustments as well as specialities concerning the disclosure of annual financial reports

Regulation

- Origin of ESEF = Transparency Directive 2013/50/EU
- The German implementation law which implemented ESEF as submission and disclosure format entered into force on Aug. 19, 2020

ESEF file type

*.XHTML, a file format which allows tagging and machine-readability

Implementation in Germany

- ESEF regulations apply to around 500 corporations and commercial partnerships that are issuers on EU-regulated markets

- German law differs the file types for the annual financial report (*.XHTML) and the other components that need to be submitted for a proper disclosure

- The document intended for disclosure has to be checked by the auditor, therefore the audit report is not part of the ESEF package (*.XHTML file)

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With the implementation of ESEF, the legislator provides an additional submission format for the disclosure of the annual financial report. According to the German Commercial Code (HGB), companies must disclosure some other corporate reporting components in a different submission format (not ESEF/*.XHTML, but *.XML or *.PDF).

Total scope of disclosure of the annual financial statements in accordance with section 325 of the HGB

Annual financial statements + management report + oaths corresponds to "annual financial report".
(submission format: *.XHTML/ESEF according to § 328 HGB)
-> EU-ESMA format

Report components
- Management report
- Balance Sheet
- Income Statement
- Notes
- Balance sheet oath
- Management Report Oath

Other corporate reporting components.
(submission format: *.PDF, *.XML)
-> national submission format

Report components
- Auditors' Report
- Report of the Supervisory Board
- Resolution on the appropriation of profits

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In Germany each and every annual account has to be checked for completeness and timeliness by the Federal Gazette "Bundesanzeiger". In regards to ESEF the Bundesanzeiger pursued the service idea of supporting companies in making disclosures in compliance with the law

Financial statements are checked for completeness and timeliness

This includes, among other things:

- identification of the company
- verification of the fiscal year period
- type of company
- identification of capital market orientation
- company size
- other formal and content-related aspects
- provisional nature

! The date of submission is decisive for the deadline, not the disclosure date.
No content-related examination according to § 334 HGB!

Service concept

- In case of inconsistency in the submission, the Bundesanzeiger will contact the customer*
- It is important to clarify questions in advance and avoid threats of administrative fines

Recommendation:
Respond to the requests of the Federal Gazette ->
This is the only way to save overall effort and avoid unjustified threats of administrative fines.

*depending on the inconsistency, a change within the financial statements is required, which may lead to a re-audit of the disclosure file by the auditor results

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Many technical and practical challenges because of the speciality of German Commercial Law

Requirements

- Hard IT technical validations
- Creation of reporting packages with the ESEF package including other components
  - ZIP file within ZIP file
  - PDF file with a ZIP package included, to validate that the correct package was audited by the auditor

Challenges

- Creation of reporting packages
- Validation of the reporting packages
- Submission
- Individual questions – individual solutions
- Testing PDF standards
- Detailed analysis of errors raised during testing or submission of orders

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For this second submission period, the Federal Gazette has redesigned its publication platform so ESEF orders can be submitted more easily

✓ The submission of a new order via the publication platform now includes three separate upload functions:

a. ESEF file -> 1* ZIP or 1* XHTML
   In each case, max. one file per annual and consolidated financial statements

b. Other components in ESEF format (e.g. management report oath / balance sheet oath) -> 1* XHTML
   In each case max. one file per annual and consolidated financial statements

c. Other files (e.g. auditor's report, report of the supervisory board) -> 10* PDF or 1* XML or 1* XHTML

✓ Uploads b. and c. are optional

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With the implementation of the new ESEF regulation, the Bundesanzeiger has kept the hard validations for IT security reasons during submission but made slightly changes because of the redesign of the submission process

❌ **Among others not allowed (hard validation)**

- Active content not allowed in delivered files (JavaScript, VBScript, Flash, ...) [2.5.1].
- Delivered files must be free of viruses and malicious code [2.5.1]
- All delivered files must be unencrypted and not protected by passwords (e.g. ZIP or PDF files).
- No frames or IFRAMES allowed, no reloading of external content.(Hyperlinks and references to external sources, such as "xmls" are allowed).
- No acceptance of PDF files with integrated ZIP / XHTML
- No acceptance of ZIP files with additional integrated ZIP files

Submission cannot be transmitted
Consequence: possibly lead to tardiness at the end of the disclosure period; depending on the change within the financial statements, a recheck of the disclosure file by the auditor results

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The structure of the ESEF Viewer in the Federal Gazette has been updated too so that ESEF orders are displayed more clearly

The file structure from the submission via the publication platform is taken into account in the ESEF viewer. Four blocks are displayed for this purpose:

a. ESEF file

b. Additional components in ESEF format

c. Additional official non-ESEF disclosure file

d. Translation

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The Bundesanzeiger's publishing house provides testing facilities

- ✓ The current submission criteria have been available for download on the publication platform since Nov. 15, 2021.

- ✓ Issuers will be able to use the testing environments to test submissions under the new workflow beginning Nov. 18, 2021:

  https://test.publikations-plattform.de

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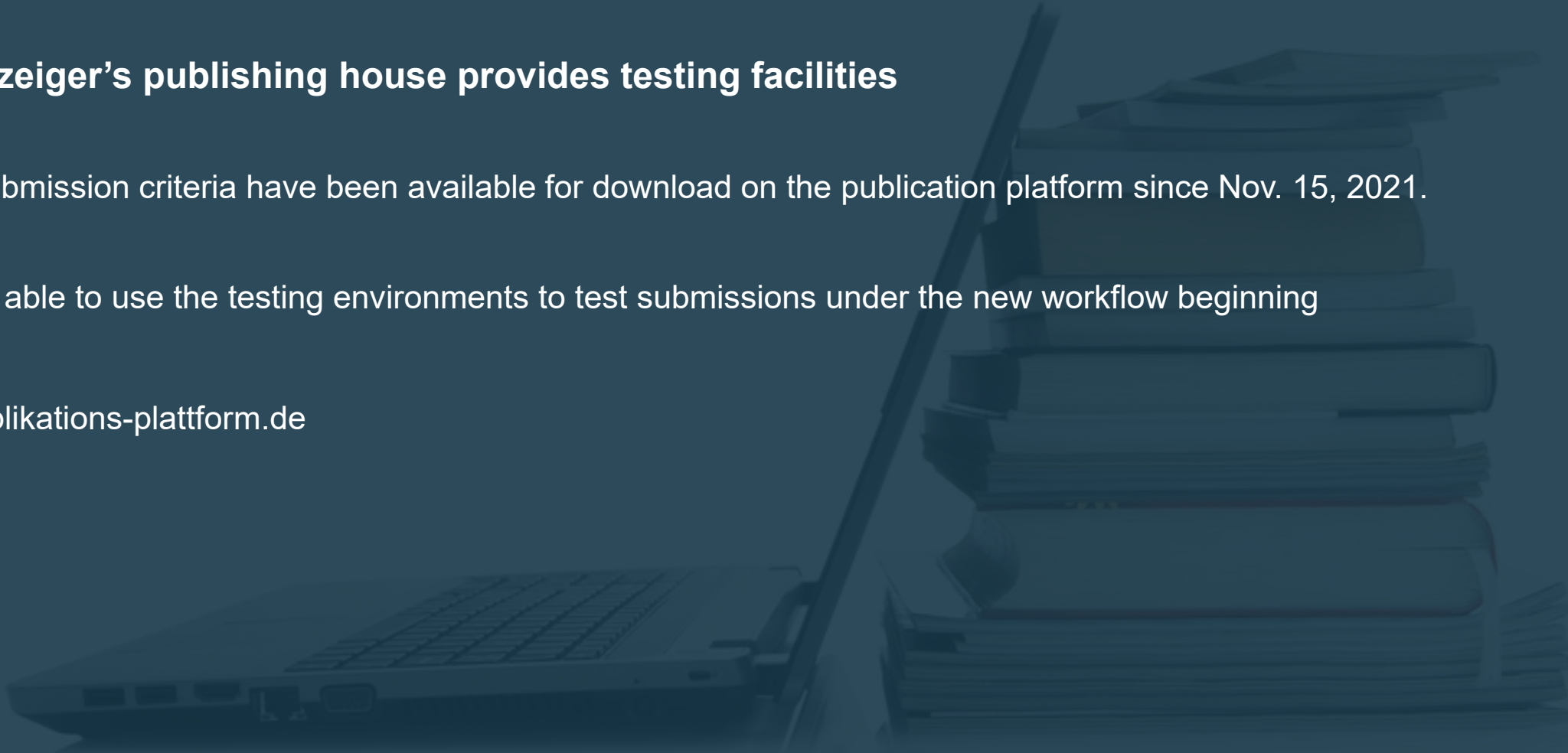
Conclusion of the Federal Gazette:

Keep the submission process simple and client oriented!